

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOHN VALENTE,

Plaintiff,

:

Case No. 3:08-cv-225

-vs-

Magistrate Judge Michael R. Merz

:

UNIVERSITY OF DAYTON,

Defendant.

DECISION AND ORDER IMPOSING SANCTIONS

This case is before the Court on Defendant's Renewed Motion to Impose Sanctions (Doc. No. 81). The Motion was filed and served on June 15, 2009. Thus any response from Plaintiff was due on or before July 9, 2009, but no response has been filed. Because an award of attorney fees is involved, however, the Court must analyze the Motion on its merits, rather than granting it by default. See S. D. Ohio Civ. R. 7.2.

The Motion demonstrates that, after the Court stayed these proceedings pending decision on Plaintiff's Petition for Writ of Mandamus to remove the undersigned, Plaintiff requested deposition dates from Defendant's counsel. When counsel demurred based on the stay, Plaintiff proceeded to set a deposition anyway and Defendant was required to move the Court for a protective order under Fed. R. Civ. P. 26, which was granted. The enforcement of the stay by issuing a protective order was straightforward and the need for motion practice could have been avoided if Plaintiff had accepted the word of experienced counsel for the Defendant that a stay means what it says or, in the alternative, asked informally for the Court's interpretation. Plaintiff did neither and thus occasioned the reasonable expenses which Defendant seeks in the Motion.

As noted by Defendant, an award of reasonable expenses is mandatory under Fed. R. Civ. P. 37(a)(5)(A) absent one of the exceptions, none of which has been claimed or proved by Plaintiff. Accordingly, Defendant is awarded its reasonable expenses of bringing the motion for protective order in the amount of \$1,734.50 which Plaintiff shall pay to Defendant, through Defendant's counsel, forthwith.

July 10, 2009.

s/ **Michael R. Merz**

United States Magistrate Judge